



VICTORIA POLICE

Public Order Legislation

For Official Use Only



VICTORIA POLICE

Breach of the Peace – Common Law



For Official Use Only

OFFICIAL: Sensitive



VICTORIA POLICE

Definition

- Whenever **harm** is actually done or sought to be done to a person or in his presence to his property or a person is in fear of being so harmed through an assault, an affray, a riot, unlawful assembly or other disturbance”

(R v Howell [1981] 3 All ER 383)

- **BoP is not a criminal offence – cannot arrest a person for BoP.**



VICTORIA POLICE

Reasonable Actions

- Breach of Peace must be imminent or actually occurring
- Power to detain or remove persons – metres and minutes, not kilometres and hours.
- Power to remove items (temporarily)
- Power to give directions (protest from given location, cease activity, etc)
- No explicit power to use force, however can do what is reasonable to prevent BoP from occurring or continuing. Entire context to be considered
- BoP works with the co-operation of the person. No cooperation – consider resist/hinder EW.

Video UPF Richmond



VICTORIA POLICE



Seven_News_2015-05-31_18-00.mp4



VICTORIA POLICE

Common Offences

- Obstruct roadway
- Criminal/wilful damage
- Weapons offences
- Resist/hinder
- Affray
- Cruelty to animals – police horses
- Lock-ons/trespass/besetting premises
- Offensive language/threatening words etc
- Summary and indictable assaults
- Assault Police/Emergency worker



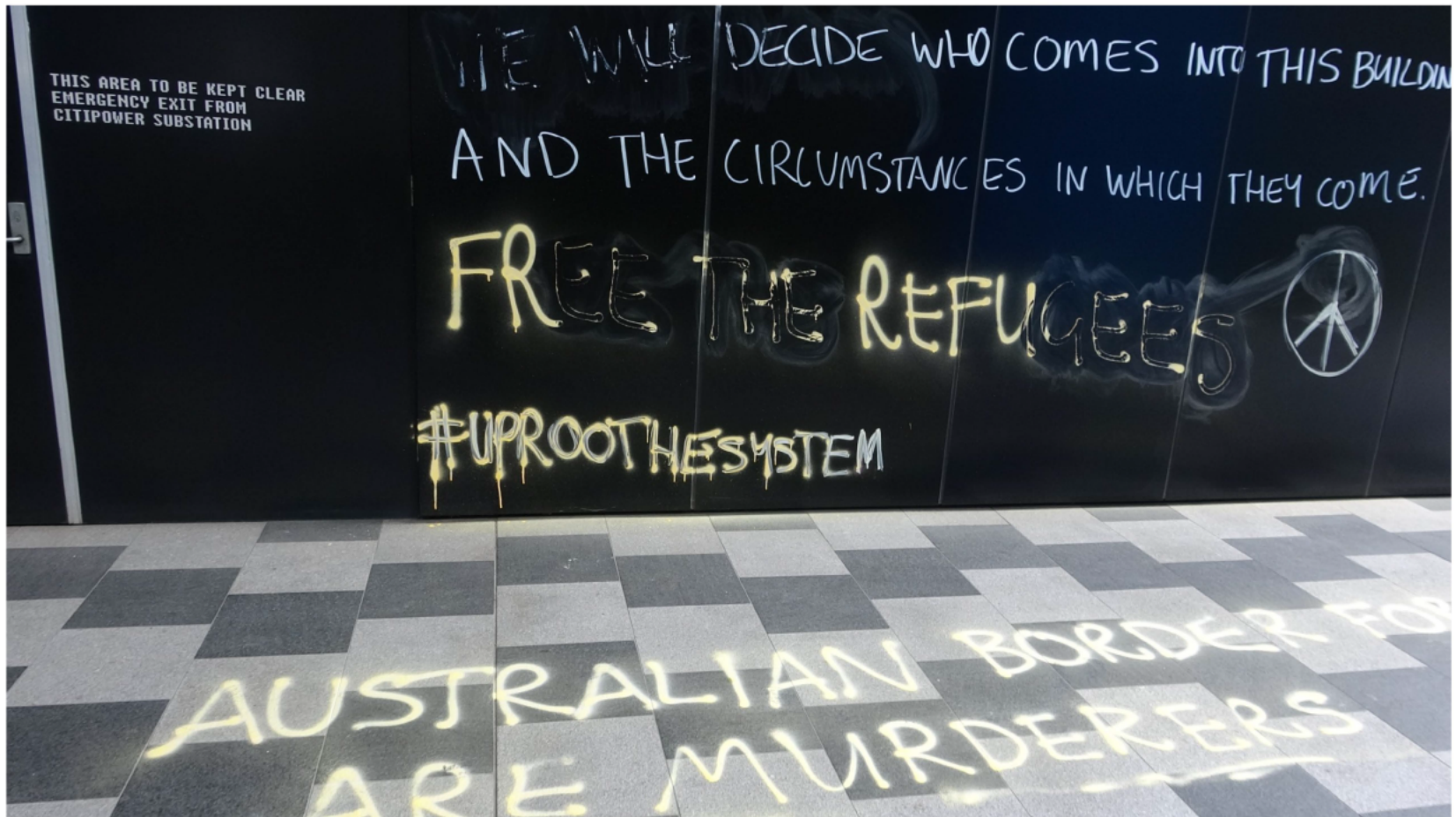
For Official Use Only

OFFICIAL: Sensitive

Discussion



VICTORIA POLICE



For Official Use Only

OFFICIAL: Sensitive



VICTORIA POLICE

Discussion

Mark Graffiti

Graffiti Prevention Act, 2007, Sec 5

Used for putting up a graffiti tag, drawing or etching or otherwise defacing property. The defacement must NOT be readily removable by wiping with a dry cloth.

The owner or representative must have given consent prior to the graffiti being done, not during or after.

NOTE: this is a summary offence, no power of arrest unless CAPS applies.

5 Marking graffiti

A person must not mark graffiti on property if the graffiti is visible from a public place unless the person has first obtained the express consent of the owner, or an agent of the owner, of the property to do so.

Penalty: Level 7 imprisonment.



VICTORIA POLICE

Control of Weapons Act – Declared Area searches



For Official Use Only

OFFICIAL: Sensitive



VICTORIA POLICE

Operation OMNI

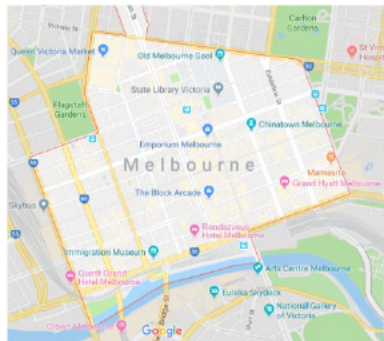
- Control of Weapons Act 1990 allows for CCoP to declare an area as either a “planned” or “unplanned” designated area.
- CCoP has delegated that power to all Assistant Commissioners of Police (includes Acting A/Commissioners)
- Allows a MoPF to exercise limited search powers within that designated area – person/vehicle/thing



VICTORIA POLICE

Operation OMNI - Continued

- Area must be no larger than reasonably necessary to allow effective response to threat of violence or disorder
- Duration must be no longer than reasonably necessary and cannot exceed **12 hours**
- Test for the CCoP is one of “may determine that the likelihood of violence or disorder involving the use of weapons will recur even if that likelihood is less than more likely than not”.





VICTORIA POLICE

Planned

- Section 10D allows for the CCoP to declare an area to be a designated area if satisfied that either –
 - More than one incident of violence or disorder has occurred in that area in previous 12 months involving the use of weapons; or
 - An event is to be held in that area and incidents of violence or disorder involving weapons have occurred at previous occasions of that event; And
- There is a likelihood that the violence or disorder will recur.
- Cannot have a subsequent “planned” in the same location until 10 days have elapsed from the end of the period.



VICTORIA POLICE

Unplanned

- Section 10E allows for the CCoP to declare in writing an area to be a designated area if satisfied that –
 - There is a likelihood that violence or disorder involving weapons will occur in that area during the period of intended operation; and
 - It is necessary to designate the area for the purpose of enabling police officers to exercise search powers to prevent or deter the occurrence of violence or disorder involving weapons.
 - Nil restriction on frequency of “unplanned” provided grounds exist.

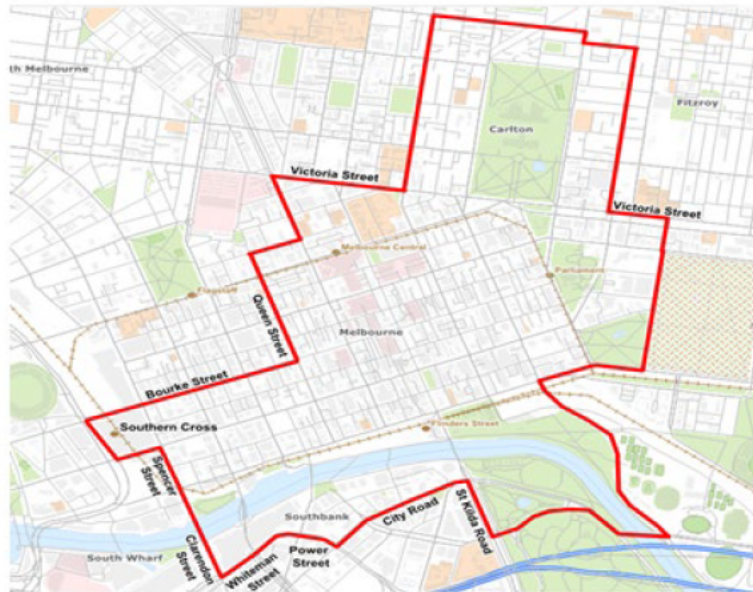


VICTORIA POLICE

Powers

- s10G – A MoPF may, without warrant, stop and search a person or thing under their control for weapons, if the person/thing is in a public place within the designated area

Designated Area for Weapon Searches



For Official Use Only

OFFICIAL: Sensitive



VICTORIA POLICE

Searching

- Search must be the least invasive search that is practicable in the circumstances.
- Schedule 1 states search may be done initially by a electronic metal detection device, may include requesting person to turn out pockets/bag etc, pat down area of pockets.





VICTORIA POLICE

Searching

If as a result of an initial wand or pocket pat down search, MoPF considers that the person may be concealing a weapon, a MoPF may conduct a further search – pat down of all outer clothing/removal of outer layer etc.



VICTORIA POLICE

MoPF Obligations

- Charter of Human Rights and Responsibilities Act 2006 applies.
- Search subjects must be selected at random
- s10I requires MoPF to advise intended subject that he/she intends to search the person, and that they are authorised to do so.
- Must give/offer the subject a search notice that advised
 - that the subject is within a public place within a designated area, and
 - that a declaration is in force under s10D or s10E, and
 - MoPF are empowered to search the person/thing
 - Offence to obstruct or hinder the search.



VICTORIA POLICE

Obligations (cont)

- Must provide name, rank and place of normal duty if asked by the subject (in writing if asked)
- No power to require name and address of subject **unless an offence is detected**
- If subject refuses to allow a search – consider obstruct/hinder provisions.
- Must not detain a subject for a period longer than reasonably necessary to conduct a search of person/thing
- CCoP must report to Minister **number of searches** conducted under s10G



VICTORIA POLICE

Questions...



For Official Use Only

OFFICIAL: Sensitive